

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6080 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RANCHHODBHAI AMBALAL PATEL

Versus

ORIENTAL INSURANCE CO LTD

Appearance:

MR JITENDRA M PATEL for Petitioner
MR RAJNI H MEHTA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/02/2000

ORAL JUDGEMENT

Learned advocate Shri J.M.Patel is appearing for the petitioner and the learned advocate Shri R.H.Mehta is appearing for the respondent Insurance Company. The facts of the present petition, in short, are that the

petitioner met with an accident with the Truck bearing No. GRQ 7014 belonging to the original owner Shankarbhai Devjibhai Patel and Yogin M. Patel of Baroda on 20.7.85. The petitioner suffered various injuries on account of the said accident and, therefore, he filed claim petition being Motor Accident Claim Petition No. 683 of 1986 before the Motor Accident Claims Tribunal at Baroda claiming total compensation of Rs. 1,50,000/- plus costs and interest.

2. Said claim petition was put up before the Lok Adalat for compromise and the compromise was recorded by the Lok Adalat in the said claim petition and consequently terms of the compromise were put in writing as per which terms, as against the total claim of Rs. 1,50,000 plus costs and interest, the petitioner agreed and settled the claim in lumpsum amount of Rs. 43,000/-. The petitioner further agreed that he will have no further claim whatsoever for the case made by him. As per the said terms of the compromise, the Insurance Company agreed to deposit the aforesaid amount of compensation within three months' period from the date of the compromise, failing which the awarded amount shall become payable with proportionate cost and interest at the rate of 12 per cent per annum from the date of the application till the realization thereof. The parties had agreed to bear their own costs. Said settlement was dated 11th October, 1987. Same was signed by the parties and their respective advocates and on the same day and it was recorded by the tribunal. Based on the said settlement, the Tribunal passed award on 12th October, 1987 and thereafter, the respondent Insurance company has confirmed the insurance policy on 3rd December, 1987 and thereafter, the respondent Co. has deposited the amount of Rs. 43,000/- on 20.1.1988. According to the petitioner, the insurance company was required to deposit the said amount within three months from the date of the settlement i.e. on or before 10th January, 1988 while the insurance Co. has deposited the said amount before the tribunal on 20.1.1988 and therefore, immediately, on the very next day, i.e. 21st January, 1988, the petitioner has filed the an application for execution being Miscellaneous Application No. 41 of 1988 against the Insurance Company before the Motor Accident Claim Tribunal at Vadodara which was contested by the insurance company by filing reply to the said application. The liability to pay the interest and cost was disputed and denied by the insurance Company. The Tribunal, under its judgment and order dated 10.6.1988, has rejected the said miscellaneous application No. 41 of 1988 by holding that the petitioner - applicant is not entitled to claim Rs.

12307/- from the insurance company. Said order dated 10th June, 1988 passed by the tribunal in Miscellaneous Application NO. 41 of 1988 has been challenged by the petitioner before this court in this petition under Article 227 of the Constitution of India.

The present petition was admitted by this Court on 4.2.1989.

Mr. J.M.Patel, the learned advocate appearing for the petitioner has submitted that according to the compromise deed arrived at between the parties in the Claim Petition No. 683 of 1986 dated 11th October, 1987, as per term No. 3 of the said compromise deed, it was very specifically agreed by and between the parties that the respondent insurance Company has to deposit an amount of Rs. 43,000/- within the period of three months from the date of compromise failing which the awarded amount shall become payable with proportionate costs and interest @ 12 per cent per annum from the date of the application till the realization thereof. According to Mr. Patel, since the Insurance Co. has deposited the said amount on 21.1.1988 and has not deposited the said amount on or before 10.1.1988, the petitioner has become entitled to claim and receive the interest on the said amount at the rate of 12 % p.a. from the date of the application till the realization thereof, according to the terms of the said settlement. Said contention was raised by the petitioner before the tribunal and was dealt with and decided by the tribunal against the petitioner and the tribunal has come to the conclusion that because of term 5 of the settlement that since the matter is settled subject to the confirmation of the insurance policy, entire settlement is required to be read as a whole. Settlement is very clear and item NO. 5 is also very clear that the matter is settled subject to the confirmation of the insurance policy and in the settlement, it has not been specified as to within how much period, the insurance company should confirm the insurance policy. Therefore, the insurance company was required to confirm the insurance policy within reasonable period and after confirmation of the insurance policy, the insurance company has immediately deposited the amount on 20.1.1988 which was late by ten days, which, in my view, cannot be said to be unreasonable. I have considered the reasons given by the tribunal while passing the impugned order. The Tribunal has not committed any error while coming to the conclusion that considering the entire settlement, reading term NO. 3 and 5 together. The settlement was arrived at between the parties subject to the confirmation of the insurance

policy and, therefore, if the insurance policy is not confirmed, then, the petitioner is not entitled to any amount as agreed between the parties. The tribunal has observed that the insurance Co. has, immediately after confirmation of the insurance policy, deposited the amount after the period of ten days which cannot be considered to be breach of the settlement entitling the petitioner to get the amount of costs and interest as alleged. The tribunal has rightly come to such a conclusion. The tribunal has given reasons in support of its conclusion. I have gone through the entire order passed by the tribunal. According to my view, the tribunal has not committed any error on the face of the record which require interference of this Court in exercise of the extra ordinary powers under Article 226 and/or 227 of the Constitution of India. No infirmity has been pointed out in the decision of the tribunal. In view of these facts, the findings given by the tribunal are quite reasonable, legal and valid which does not require any interference and, therefore, this petition is required to be dismissed having no merits. Same is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.

18.2.2000. (H.K.Rathod, J.)

Vyas